

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:)
)
WESTINGHOUSE ELECTRIC COMPANY,)
LLC et al.,) Chapter 11
) Case No. 17-10751
Debtors.) (MEW)
)
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)
FLUOR ENTERPRISES, INC.,) Adv. Proc. No.
) 18-01635 (MEW)
Plaintiff,)
)
VS.)
)
W WIND DOWN CO, LLC)
)
Defendant.)
-----)

VIDEOTAPED DEPOSITION OF DAVID DURHAM
Wednesday, May 29, 2019

VIDEOTAPED DEPOSITION OF DAVID DURHAM, a witness
herein, taken in accordance with Pennsylvania Rules
of Civil Procedure No. 4007.1, by and before Dutcheen
O. Cameron, RMR, CRR, and Notary Public in and for
the Commonwealth of Pennsylvania, at the offices of
Westinghouse Electric Company, 1000 Westinghouse
Drive, Cranberry Township, Pennsylvania, 16066, on
Wednesday, May 29, 2019, at 9:32 a.m.

4 (Pages 10 to 13)

Page 10	Page 12
<p>1 A. Until -- until the last three years, 2 yes. 3 Q. And that would be the last three years 4 when you were at Westinghouse? 5 A. At Westinghouse, correct. 6 Q. So did your role change while you were 7 at Fluor, or did it stay the same the whole time? 8 A. It was predominantly the same but 9 chasing different markets. First it was Department 10 of Energy. Then it included the UK's cleanup 11 market, a Russian sub decommissioning program, and 12 then it switched to nuclear new build. So 13 commercial utility work. 14 Q. Why did you leave Fluor? 15 A. You know, I -- we had won a new build 16 job partnered with Toshiba, and it appeared the 17 market wasn't really going to expand the way we had 18 assumed. And I kind of just felt like I had done 19 everything I was going to do, and so GE Hitachi 20 offered a promotion in a different -- in a 21 different market doing different things. I was 22 just ready for a change. I had done the same basic 23 job for about 11 years so. . . 24 Q. What was that particular job with 25 Toshiba?</p>	<p>1 the contract? 2 A. I don't know. 3 Q. Could you tell me what you did, please, 4 Mr. Durham, to prepare for the deposition today? 5 A. I received a briefing on the process 6 from our counsel, and that's about it. 7 Q. From -- and by your counsel do you mean 8 Mr. Swanson? 9 A. Dave Mura. 10 Q. And I don't want to get into the 11 substance of what you discussed with Dave Mura. 12 A. Just the process. 13 Q. Just the process. Do you know anything 14 about the dispute between Wind Down Co. and Fluor? 15 A. All I know is that Fluor filed suit for 16 lost -- for -- claiming lost profits and I read the 17 Complaint when it first came out and since then 18 I've, quite frankly, done nothing. 19 Q. Have you read -- have you read anything 20 other than Fluor's initial pleading? 21 A. No. No. 22 Q. Have you gone back and looked at any of 23 the agreements or any of the e-mails? 24 A. No. 25 Q. Has anyone asked you whether you have</p>
<p style="text-align: center;">Page 11</p> <p>1 A. South Texas project. 2 Q. Was that something referred to as STP? 3 A. Yes, ma'am. 4 Q. Who did you work with on that project at 5 Fluor? 6 A. Oh gosh. Obviously Ron Pitts because he 7 was the head of operations. Counselor at the other 8 end of the table, Jude. Chris Tye. I mean -- I 9 mean, I don't remember all the people. 10 Q. And how did that -- do you know how that 11 job ended up, the South Texas project, what 12 happened? 13 A. I know what I -- either what I had been 14 told by people at Fluor or what I read in the 15 paper. 16 Q. What is that? 17 A. That Toshiba insisted that Fluor invest 18 as an owner in the project, that Fluor wasn't 19 willing to do that, that the Shaw Group was willing 20 to do that, and so Toshiba replaced Fluor with Shaw 21 who then invested in a couple hundred million 22 dollars and lost every penny of it. 23 Q. Did -- was it your understanding that 24 when you say they, that Toshiba switched to Shaw, 25 that they terminated Fluor for convenience under</p>	<p style="text-align: center;">Page 13</p> <p>1 any e-mails relevant to this? 2 A. I think I was given a -- I don't know 3 what the right terminology is, but a save -- 4 document save e-mail order when the suit was first 5 filed. That's all. 6 Q. Document preservation notice? 7 A. Thank you. Thank you. Yes, that's 8 correct. 9 Q. In your job is it your practice to take 10 handwritten notes? 11 A. It is. Usually. Not always. Usually. 12 Q. What do you do with those notes, just 13 typically? 14 A. I typically save them during the process 15 and then at some point, months or a year or two 16 later, I throw everything away. 17 Q. Did you take notes of your discussions 18 with people at Fluor relative to the projects that 19 bring us together today, the South Carolina and 20 Georgia plans? 21 MR. SWANSON: Objection to form. 22 MR. BEREZIN: Join. 23 MR. SWANSON: You can answer. 24 A. I sometimes took notes, not always. 25 BY MS. BAUM:</p>

5 (Pages 14 to 17)

Page 14	Page 16
<p>1 Q. Do you still maintain any of those 2 notes? 3 A. I haven't searched through -- I know 4 that in my files in Charlotte I do not. I have not 5 searched through a couple of boxes that are still 6 here in Pittsburgh. I don't know if there are 7 notes in there or not. I did purge a lot of things 8 a couple years ago, quite frankly. 9 MS. BAUM: Counsel, Mr. Swanson, if -- I 10 think any of those notes either of conversations 11 with Fluor or of conversations with people 12 internally would be called for under our subpoena, 13 so I'd request that those -- be sure that those not 14 be destroyed and they be searched and provided to 15 us if there's anything responsive in them. 16 MR. SWANSON: Okay. Understood. 17 BY MS. BAUM: 18 Q. Have you destroyed any handwritten notes 19 in the last year? 20 A. No. Not about this matter. 21 Q. Do you understand whether in connection 22 with Fluor's dispute with Wind Down Co. your 23 employer has any financial interest whether direct 24 or indirect in the outcome of that matter? 25 A. I don't have personal knowledge. I've</p>	<p>1 until I started working at Westinghouse. 2 Q. When you say "that's what I was hired to 3 do," what do you mean by that? 4 A. I was hired to help negotiate the 5 arrangements with Fluor and then the acquisition of 6 our former construction partner -- Westinghouse's 7 former construction partner and then with the 8 agreement that I would then lead that company once 9 we acquired it. 10 Q. Okay. Since Fluor filed its claim, have 11 you spoken to anyone on behalf of Wind Down Co. 12 relative -- about this matter? 13 A. I can't speak on behalf of Wind Down Co. 14 I can only speak on behalf of Westinghouse. 15 Q. Right. Maybe my question wasn't clear. 16 Since Fluor filed its claim in the bankruptcy court 17 related to the Summer and Vogtle projects, have 18 you, personally, had any conversations with anyone 19 who was representing Wind Down Co.? 20 A. No, I don't think so. 21 Q. Other than your counsel in this case, 22 have you had conversations with anybody about 23 Fluor's claims or the positions that the parties 24 are taking in those claims? 25 A. My wife. I honestly don't remember if</p>
<p style="text-align: center;">Page 15</p> <p>1 been told we do not. 2 Q. Did you work with Colleen Grygier while 3 she was -- 4 A. I did. 5 Q. -- employed at Westinghouse? 6 A. I did. 7 MR. SWANSON: Let her finish her 8 question. 9 THE WITNESS: Sorry. 10 BY MS. BAUM: 11 Q. And when I talk about this project, can 12 we have an understanding that we are talking -- we 13 are here talking about the Vogtle and Summer 14 projects on which Fluor was engaged to provide 15 services for Westinghouse? 16 A. Of course. 17 Q. Other than working on that project, had 18 you worked with Miss Grygier prior to those 19 particular projects? 20 A. No. Because I was hired specifically to 21 -- and immediately started talking to Fluor. So, I 22 mean, that's what I was hired to do. I hadn't been 23 at Westinghouse prior to that so I -- 24 Q. Sorry. Go ahead. 25 A. So I just had no -- I didn't meet her</p>	<p style="text-align: center;">Page 17</p> <p>1 I've spoken to anybody else. I don't think so. 2 Q. I want to go back to your statement that 3 you were hired to help with the negotiations -- 4 hired by Westinghouse to help with the negotiations 5 with Fluor. When specifically did you begin 6 working for Westinghouse? 7 A. July something of 2015, towards the end 8 of the month. 9 Q. And when you say that you were hired for 10 that purpose, could you tell me, please, to the 11 best of your recollection, what you were told by 12 Westinghouse about its reasons for hiring you? 13 A. I had worked with Westinghouse's then 14 CEO at GE Hitachi, so we knew each other very well. 15 Q. Is that Mr. Roderick? 16 A. Yes, it is. And he knew of my 17 background, he knew of my capabilities. We didn't 18 go into a lot of detail as to why he was hiring me. 19 He told me what he wanted me to do and, I mean, 20 that sounded interesting. I knew that Westinghouse 21 was in trouble on these projects and that our 22 efforts to take over the business of CB&I and that 23 -- I say acquisition, but we didn't pay anything 24 for it, that's why I use the word takeover. And 25 then to bring Fluor in as a replacement</p>